

PETER C. ANDERSON
United States Trustee
Michael Hauser (SBN 140165)
Attorney for the United States Trustee
Office of the United States Trustee
411 West Fourth Street, Suite 7160
Santa Ana, CA 92701-8000
Tel: 714-338-3400
Fax: 714-338-3421
michael.hauser@usdoj.gov

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION

In re:

Jeffrey S. Beier,

Debtor.

CASE NUMBER: 8:23-bk-10898-TA

CHAPTER 11

UNITED STATES TRUSTEE'S
LIMITED OBJECTION TO MOTION IN
INDIVIDUAL CHAPTER 11 CASE FOR
ORDER AUTHORIZING DEBTOR IN
POSSESSION TO EMPLOY GENERAL
BANKRUPTCY COUNSEL

Date: [NO HEARING SET]

Time:

Courtroom: 5B

NOTICE IS HEREBY GIVEN that Peter C. Anderson, the United States Trustee for the Central District of California, ("hereinafter "U.S. Trustee") files this limited objection to the *Motion in Individual Chapter 11 Case for Order Authorizing Debtor in Possession to Employ General Bankruptcy Counsel* [dkt # 31] ("Objection").

I. INTRODUCTION

The U.S. Trustee has reviewed the *Motion in Individual Chapter 11 Case for Order Authorizing Debtor in Possession to Employ General Bankruptcy Counsel* (“Employment Application”) and objects to the Employment Application because the terms and conditions under which the Applicant seeks to be employed require clarification. In particular, the Applicant seeks employment under 11 U.S.C. § 328 rather than under 11 U.S.C. §§ 330 and 331. The U.S. Trustee requests that the Applicant file a supplement to the Employment Application clarifying the terms and conditions of employment. Further, the U.S. Trustee requests a hearing on the matter pursuant to Local Bankruptcy Rules 2014-1(b)(5) and 9013-1(o)(4) unless the supplement that is filed resolves the concerns of the U.S. Trustee.

II. LEGAL ANALYSIS

A. Applicant Fails to Provide Justification for Employment under 11 U.S.C. § 328.

The Employment Application states that Application seeks employment pursuant to 11 U.S.C. § 328. *See* Employment Application at page 3, par. 1.b (1).

Pre-approval of a fee arrangement under 11 U.S.C. § 328(a) depends on the totality of the circumstances. *In re Smartworld Techs, LLC*, 552 F.3d 228, 233 (2d Cir. 2009); *In re Airspect Air., Inc.*, 385 F.3d 915, 921-22 (6th Cir. 2004). Employment under § 328 “permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only ‘if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and condition.’” *In re Circle K Corp.*, 279 F. 3d 669, 671 (9th Cir. 2002). Applicant has stated no justification as to why Applicant should be employed under § 328. Therefore, the employment pursuant to 11 U.S.C. § 328 should be denied. If the Court grants Applicant’s employment, Applicant should be employed pursuant to 11 U.S.C. §§ 327, 330 and 331.

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III. CONCLUSION

For the forgoing reasons, the U.S. requests that the Applicant clarify the terms and conditions upon which it is seeking to be employed. Further, the U.S. Trustee requests a hearing on the matter pursuant to Local Bankruptcy Rules 2014-1(b)(5) and 9013-1(o)(4) unless the supplement that is filed resolves the concerns of the U.S. Trustee.

Dated: June 4, 2023

Respectfully submitted,

PETER C. ANDERSON
UNITED STATES TRUSTEE

By: /s/ Michael Hauser
Michael Hauser
Attorney for the United States Trustee

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

OFFICE OF THE UNITED STATES TRUSTEE, 411 WEST FOURTH ST., SUITE 7160, SANTA ANA, CA 92701

A true and correct copy of the foregoing document entitled UNITED STATES TRUSTEE'S LIMITED OBJECTION TO MOTION IN INDIVIDUAL CHAPTER 11 CASE FOR ORDER AUTHORIZING DEBTOR IN POSSESSION TO EMPLOY GENERAL BANKRUPTCY COUNSEL will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **June 5, 2023**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Anerio V Altman LakeForestBankruptcy@jubileebk.net, lakeforestpacer@gmail.com
- Greg P Campbell chl1ecf@aldridgepite.com,
gc@ecf.inforuptcy.com;gcampbell@aldridgepite.com
- Michael J Hauser michael.hauser@usdoj.gov
- United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov

2. SERVED BY UNITED STATES MAIL: On **June 5, 2023**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed

Jeffrey S Beier
P O Box 7644
Laguna Niguel, CA 92677

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **June 5, 2023**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who mconsented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED: 6/5/23 Tari King s/s Tari King